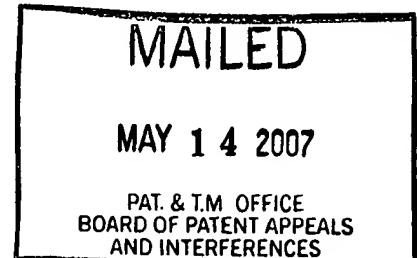


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCE

Ex parte PINAKI RAY

Application 09/475,768



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on April 2, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that on August 22, 2005, Appellant filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, the Appeal Brief filed on August 22, 2005, does not fully comply with the new rules under

37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) ***Related Proceedings Appendix*** – Copies of any decisions rendered by a court or the Board in any proceeding identified by the examiner in the “Related Appeals and Interference” section of the answer.

An in-depth review of the Appeal Brief indicates that the following sections are deficient from the Appeal Brief filed August 22, 2005:

- 1) “Summary of Claimed Subject Matter,” as set forth in 37 CFR § 41.37(c)(1)(v).
- 2) “Evidence Appendix,” as set forth in 37 CFR § 41.37 (c)(1)(ix).
- 3) “Related Proceeding Appendix,” as set forth in 37 CFR § 41.37(c)(1)(x).

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c).

In addition, on November 25, 2005, an Examiner’s Answer was entered into the record. In the Evidence Relied Upon section, page 3, paragraph 9, the Examiner has stated, “No evidence is relied upon by the Examiner in the rejection of the claims under appeal.” A review of the file reveals that references to Boddie (U.S. Patent No. 4,192,302), Aigner (U.S. Patent 4,540,402) and Sterman (U.S. Patent 5,452,733) were applied to the statement of rejections in the Grounds of Rejection, paragraph (9) of the Examiner’s Answer.

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Before further review, the Examiner must submit a corrected Examiner's Answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed on August 22, 2005, defective;
- 2) notify Appellant to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 3) if necessary vacate the Examiner's Answer mailed March 9, 2005, to consider the supplemental Appeal Brief and submit a revised Examiner's Answer in compliance with MPEP §1207.02; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES


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